APPENDIX D
TO DIR CONTRACT NO. DIR-TSO-3370

Texas DIR

Purchase and License Agreement

Spillman®
Purchase and License Agreement

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Purchase and License Agreement

This Purchase and License Agreement (the "Agreement") is made and entered into effective as of the date this Agreement is signed by both parties below (the "Effective Date"), and is by and between:

Spillman Technologies, Inc. ("Spillman")
4625 Lake Park Blvd.
Salt Lake City, UT 84120

and

Customer Name ("Customer")
Street Address
City, ST ZIP

Customer desires to purchase from Spillman licenses for certain Spillman software, technical services, maintenance services, and third party hardware, software and services, as set forth in Exhibit B (Purchased Products and Services), and Spillman desires to sell such licenses, services and products to Customer, pursuant to the terms and conditions of DIR Contract No. DIR-TSO-3370 and this Agreement.

In consideration of the mutual agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1: Definitions

1.1 **"Confidential Information"** means any non-public information provided by either party to the other in connection with this Agreement, including the Software, future product plans, trade secrets; know-how; a party's non-public business and financial information; Customer lists; and any written materials marked as confidential and any other information, including visual or oral information, which reasonably should be understood to be confidential. Confidential Information does not include information that a party can prove: (a) is now or later becomes generally available to the public without fault of the party who received such information; (b) was rightfully in the receiving party's possession prior to its disclosure by the disclosing party; (c) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (d) is obtained by the receiving party without obligation of confidentiality from a third party who has the right to disclose it. Additionally, the receiving party may disclose Confidential Information to the extent required by a judicial or legislative order or proceeding, or by any applicable federal or state open records act or freedom of information act requirements provided that it gives the disclosing party prompt prior notice of the intended disclosure and an opportunity to respond or object to the disclosure, if permissible.

1.2 **"Documentation"** means all written or electronic user documentation for the Software provided by Spillman to Customer.

1.3 **"Software"** means the package of Spillman computer program(s), interfaces and/or data, in machine-readable form only, as well as related materials, including Documentation, identified in Exhibit B (Purchased Products and Services) and Exhibit C (Existing Interfaces – Technical Product Documents) or subsequently licensed by Customer pursuant to the terms of DIR Contract No. DIR-TSO-3370 and this Agreement. Software also includes all Utilities, modifications, new Releases and Enhancements (as defined in Exhibit A (Maintenance and Support Agreement)). Software specifically

excludes Third Party Software not developed by Spillman, but that might be used in conjunction with the Spillman software, such as word processors, spreadsheets, terminal emulators, etc.

1.4 "**Spillman Application Administrator"** means an agent of Customer appointed by Customer, who has been certified on the Software by Spillman, pursuant to the procedures set forth in Section 6 of Exhibit A (Maintenance and Support Agreement), and is able to communicate effectively with Spillman support personnel in the description and resolution of problems associated with the Software.

1.5 **"Utilities"** means the software utilities and tools provided by Spillman as part of the Software, including Spillman's XML Query, ODBC interface and implementation code, ctperl, dbdump, and dbload, as well as any other software utilities provided by Spillman in connection with the Software.

Section 2: Purchases of Technical Services and Third Party Products

2.1 **Technical Services.** Customer agrees to purchase the Spillman technical services listed in Exhibit B (Purchased Products and Services).

2.2 **Third Party Products.** Customer agrees to purchase from Spillman the third party products identified in Exhibit B (Purchased Products and Services). Spillman makes no warranties with respect to such third party products, but agrees to pass through to Customer any warranties provided by the manufacturers of such products, to the extent permitted.

Section 3: License

3.1 **Grant of License**. In consideration of the payment of the license fees set forth in Appendix C of DIR Contract No. DIR-TSO-3370 and Exhibit B (Purchased Products and Services), Spillman grants Customer a nonexclusive, non-transferable license to use the Software, subject to the terms of DIR Contract No. DIR-TSO-3370 and this Agreement (including the restrictions with respect to Utilities set forth in Section 10).

3.2 **Ownership.** Spillman's Software and all related documentation and materials provided by Spillman are licensed (not sold) to Customer. Spillman retains sole and exclusive ownership of all rights, title, and interest in and to the Software, all related materials, and all modifications and enhancements thereof (including ownership of all trade secrets, copyrights and other intellectual property rights pertaining thereto), subject only to the licenses expressly granted to Customer herein by Spillman, regardless of whether Customer, its employees, or contractors may have contributed to the conception or development of any part of the Software, including enhancements. The Software may also include third party software separately licensed to Spillman from third party licensors. Such third party software is sublicensed to Customer and protected pursuant to the terms of DIR Contract No. DIR-TSO-3370 and this Agreement, and may be used only in conjunction with Spillman's Software. This Agreement does not provide Customer with title or ownership of the Software or any component thereof, but only a limited license. Spillman and its licensors specifically reserve all rights not expressly granted to Customer in this Agreement. Customer must keep the Software free and clear of all claims, liens, and encumbrances.

Section 4: Scope of Rights

4.1 **Location of Software.** Customer may install and use the Software only in Customer's own facilities, including any authorized mobile sites. Customer shall give Spillman two (2) weeks prior written notice of any change in the location of Customer's primary facility where the server-based Software is installed; provided that if an immediate change in location is required due to an emergency or disaster recovery, Customer will notify.

4.2 **Customer Use Only.** Customer may use and execute the Software only for purposes of serving the internal needs of Customer's business, except as specifically set forth in this Agreement.

4.3 **Copies.** Customer may make one copy of the Software in machine-readable, object code form, for backup and archival purposes only, provided that Spillman's copyright notice is included. Such backup copies shall not be used for productive use, except to the extent required if the primary Software installation is not functioning. Customer may reproduce (photocopy or electronic copy) Software Documentation according to Customer's needs for the authorized use of the Software. Customer may not distribute any of the Documentation for use outside of Customer's primary place of business.

4.4 **Shared Agency Arrangements.** If Customer and another agency (the "Shared Agency") desire to enter into an arrangement whereby Customer will act as a "Host Agency" and permit the Shared Agency to access the Software through Customer, the Shared Agency and Spillman will execute a Shared Agency Agreement for such arrangement and attach it to this Agreement as an additional Exhibit. Spillman will bill Customer directly for the applicable license fees, and Customer agrees to be responsible for timely payment of such invoices. Customer shall require the Shared Agency to comply with the terms of DIR Contract No. DIR-TSO-XXXX and this Agreement and shall notify Spillman and cooperate as reasonably requested by Spillman in the event of any non-compliance by the Shared Agency.

Section 5: Fees and Payments

5.1 **Fees.** The license fee for the Software and the price for all services and third party products purchased by Customer from Spillman are specified in Appendix C of DIR Contract No. DIR-TSO-3370 and Exhibit B (Purchased Products and Services). All invoices will be handled in accordance to Appendix A, Section 8I of DIR Contract No. DIR-TSO-3370 and payment will be handled in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3370.

5.2 **Taxes.** Taxes will be handled in accordance to Appendix A, Section 8I of DIR Contract No. DIR-TSO-3370.

Section 6: Support

6.1 Spillman will provide maintenance and support services to Customer with respect to the Software, pursuant to the terms of DIR Contract No. DIR-TSO-3370 and the Support Agreement attached as Exhibit A (Maintenance and Support Agreement) hereto.

Section 7: Customer Responsibilities

7.1 **Spillman Application Administrator.** Customer is responsible for designating a Spillman Application Administrator who is qualified to operate the Software on Customer's own equipment, has been certified as set forth in Exhibit A (Maintenance and Support Agreement), and is familiar with the information, calculations, and reports that serve as input and output of the Software.

7.2 **Spillman Support Contact.** Agency personnel who are authorized to contact Spillman support are listed in Appendix 1, as referenced in Section 6 of Exhibit A (Maintenance and Support Agreement). Spillman reserves the right to refuse assistance or to charge additional fees if the agency representative seeks assistance with respect to such basic background information or any other matters not directly relating to the operation of the Software.

7.3 **Additional Components.** Other components (hardware and/or software) may be required for the use of the Software. Spillman assumes no responsibility under this Agreement for obtaining and/or supporting such components except as expressly agreed in writing.

7.4 **Proper Environment.** Customer is responsible for ensuring a proper environment and proper utilities for the computer system on which the Software will operate, including housing and operating the server equipment in an environment and according to the specifications for the equipment as specified by its manufacturer.

7.5 **Data Conversion Services.** Spillman assumes no responsibility under this Agreement for converting Customer's data files for use with the Software, except as listed in Exhibit B (Purchased Products and Services) and detailed in a data conversion scope of work.

7.6 **Improper Use.** Customer shall use reasonable efforts to prevent its employees and independent contractors from making unauthorized copies of the Software or improperly using the Software. If Customer discovers any such problems, it will promptly notify Spillman and take commercially reasonable actions to resolve the problem as soon as reasonably possible.

Section 8: Proprietary Protection and Restrictions

8.1 **Third Party Access and Queries.** Customer may not allow any other agency, entity, or individual to use or have access to the Software in any manner other than inquire-only unless expressly authorized by Spillman. Except as specifically authorized by Spillman, queries may be conducted solely for Customer's internal business purposes, and Customer may not query the Software, or permit any third party to query the Software, for a third party's business purposes.

8.2 **Restrictions.** Customer may not use, copy, modify, rent, share, or distribute the Software (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized in writing by Spillman. Customer may not translate, modify, reverse assemble, reverse compile, or otherwise reverse engineer the Software.

8.3 **Competitive Use.** Customer may not utilize or permit a third party to access or utilize any part of the Software (including the Utilities) in any manner that competes, directly or indirectly, with any product or service provided by Spillman. This includes, without limitation, using the Software (or its Utilities) to develop any software, interfaces, or other products that compete with Spillman's

products or services, or using interfaces or other products connecting to the database of the Software in connection with a third party's competing product.

8.4 **No Service Bureau, Etc.** No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized in writing by Spillman. Customer may not install the Software in any other computer system or use it at any other location without Spillman's express authorization obtained in advance (which will not be unreasonably withheld).

8.5 **Inspection.** Customer hereby authorizes Spillman to enter Customer's premises in order to inspect the Software at a time and in a manner agreed to in writing in advance by Customer and Spillman, to verify Customer's compliance with the terms of this Agreement.

Section 9: Confidential Information

9.1 **Confidentiality Terms.** To the extent allowable under the Texas Public Information Act, each party shall keep confidential all Confidential Information provided to it by the other party, and shall not use such Confidential Information for any purpose other than the proper purposes of this Agreement. A party may disclose Confidential Information only to its employees and contractors who need to know such information, and who are bound to keep such information confidential. Each party shall give the other party's Confidential Information at least the same level of protection as it gives its own confidential information of similar nature, but not less than a reasonable level of protection.

9.2 **Restrictions on Disclosure.** To the extent allowable under the Texas Public Information Act, Customer must not disclose the Software, its Documentation, or any other Spillman documentation, (i) to any competitor of Spillman, or (ii) to any other third party unless it has a need to know such information for the proper purposes of this Agreement.

Section 10: Utilities; Restrictions on Usage

10.1 **Utilities.** Spillman provides certain software Utilities as part of the Software. Spillman may add, modify, or remove Utilities from the Software during the term of this Agreement. The Utilities contain material that is proprietary to Spillman and/or its licensors, and may be used only as permitted by this Agreement.

10.2 **Use of Utilities.** Customer is permitted to use the Utilities for read-only operations in connection with the authorized use of the Software, but may not allow third parties to use the Utilities unless an authorized official of Spillman consents in writing. With the exception of ODBC, customer is NOT permitted to utilize the Utilities or any other software tools to write to Spillman's database in any manner, due to the potential for data corruption and system slowdown or damage. Due to the potential for data corruption and system slowdown or damage, Customer agrees that it does so solely at its own risk.

10.3 **Disclaimer.** Spillman is NOT responsible for any breach of warranty, damages to the Software or its database, data corruption, support issues, security issues or performance issues arising out of Customer's or a third party's use of the Utilities (even if permitted by Spillman) or use of any other

software not specifically licensed in this Agreement (including any third party querying or writing to the database).

Section 11: Limited Warranty and Limitation of Liability; Indemnification

11.1 **Functionality.** Spillman warrants for a period of 12 months (the "Warranty Period"), and for Customer's benefit alone, that the Software conforms in all material respects to the specifications for the current version of the Software provided by Spillman. The Warranty Period will begin upon the earlier of (i) the date of Customer's cutover to live operation of the Software (Go-live); or (ii) twelve (12) months after the Effective Date. This warranty is expressly conditioned on Customer's observance of the operation, security, and data-control procedures set forth in the Documentation included with the Software.

11.2 **Limitations.** Spillman is not responsible for obsolescence of the Software that may result from changes in Customer's requirements. The warranty in Section 11.1 shall apply only to the most current version of the Software issued by Spillman from time to time. Customer must notify Spillman of any warranty issues or breaches within the Warranty Period; after the end of the Warranty Period, Software errors and defects will be handled under Exhibit A (Maintenance and Support Agreement). Issuance of updates does not result in a renewal or extension of the Warranty Period. Spillman assumes no responsibility for the use of superseded, outdated, or uncorrected versions of the Software. Such warranty also excludes non-performance issues that result from third party hardware or software malfunction or defect; modification of the Software by any person other than Spillman, or defects or problems that are outside the reasonable control of Spillman. Customer will reimburse Spillman for its reasonable time and expenses for any services provided at Customer's request to remedy excluded non-performance issues. Additionally, Spillman is not responsible for any problems or errors with the Software or Customer's system resulting from use of the ctperl or dbload Utilities in any manner other than read-only. Customer expressly acknowledges that any use of the "write" or "update" features of these Utilities may damage Customer's database or cause other problems with its system.

11.3 **Remedies.** As Customer's exclusive remedy for any material defect in the Software for which Spillman is responsible, Spillman shall use reasonable efforts to correct or cure any reproducible defect by issuing corrected instructions, a fix or a workaround. In the event Spillman does not correct or cure such nonconformity or defect after Spillman has had a reasonable opportunity to do so, Spillman's liability shall be limited to the amount paid as the license fee for the defective or non-conforming module of the Software. Spillman shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Software if Customer has made any changes whatsoever to the Software, if the Software has been misused or damaged in any respect, or if Customer has not reported to Spillman the existence and nature of such nonconformity or defect promptly upon discovery thereof.

11.4 **Limitation of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SPILLMAN AND ITS LICENSORS DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE SOFTWARE, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, TITLE, NON-INFRINGEMENT, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

11.5 **Limitation of Liability.** Limitation of liability will be handled in accordance to Appendix A, Section 10K of DIR Contract No. DIR-TSO-3370.

11.6 **Indemnification.** Indemnification will be handled in accordance to Appendix A, Section 8I of DIR Contract No. DIR-TSO-3370.

Section 12: Term of Agreement; Termination

12.1 **Term of Agreement.** Customer's license of the Software shall become effective upon the execution of this Agreement for a twelve (12) month term and shall have three (3) one (1) year renewal options to be exercised by Customer providing thirty day written notice to Vendor prior to the then-expiration.

12.2 **Support Required.** Customer is required to continue purchasing support and maintenance services from Spillman throughout the term of this Agreement, as a condition to the license of the Software under this Agreement. Termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3370.

12.3 **Effect of Termination.** Upon termination of this Agreement, all rights granted to Customer will terminate and revert to Spillman and/or its licensors. Subject to record retention laws and policies, promptly upon termination of this Agreement for any reason or upon discontinuance or abandonment of Customer's possession or use of the Software, Customer must return or destroy, as requested by Spillman, all copies of the Software in Customer's possession (whether modified or unmodified), and all related Documentation, Confidential Information and other materials pertaining to the Software (including all copies thereof). Customer agrees to certify Customer's compliance with such obligation upon Spillman's request. Subject to record retention laws and policies, Customer will permit Spillman to repossess the Software and any products sold hereunder for which Customer has not fully paid the purchase price. If Customer has any outstanding undisputed payment obligations under this Agreement up to termination will be due. The terms of Sections 2.2, 3.2, 5.2, 9, 10.3, 11.4, 11.5, 11.6, 12.3 and 13 shall survive termination or expiration of this Agreement.

Section 13: Miscellaneous

13.1 **Entire Agreement – Amendment.** DIR Contract No. DIR-TSO-3370 and this Agreement, together with its exhibits, which are attached hereto and incorporated herein by reference, constitutes the complete agreement between the parties with respect to the Software and other subject matter hereof. No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of each party.

13.2 **Assignment.** Assignments will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-3370.

13.3 **Governing Law.** This Agreement will be governed by the laws of the state of Texas, not including conflicts of laws provisions. The parties hereby submit to the exclusive jurisdiction and venue of state courts located in Travis County, Texas with respect to any action between the parties relating to this Agreement. Nothing herein shall be construed to waive the sovereign immunity of the state of Texas.

13.4 **No Waiver.** Any waiver by either party of a default or obligation under this Agreement will be effective only if in writing. Such a waiver does not constitute a waiver of any subsequent breach or default. No failure to exercise any right or power under this Agreement or to insist on strict compliance by the other party will constitute a waiver of the right in the future to exercise such right or power or to insist on strict compliance.

13.5 **Limitation of Actions.** No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than four (4) years after such cause of action occurred.

13.6 **Notices.** Notices will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3370.

13.7 **Severability.** If any term of DIR Contract No. DIR-TSO-3370 or this Agreement is held to be invalid or void by any court or tribunal of competent jurisdiction, it shall be modified by such court or tribunal to the minimum extent necessary to make it valid and enforceable. If it cannot be so modified, it shall be severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.

13.9 **Force Majeure.** Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3370.

13.10 **Export.** In the event export of the Software is expressly permitted in writing by Spillman, Customer may only export the Software (including any related materials) as authorized by U.S. law and any other applicable jurisdiction. In particular, the Software may not be exported into any country where such export is prohibited by law, regulation, or governmental order.

Spillman desires that Customer be confident that the Software will suit Customer's needs. Although Customer must make that determination, Spillman is prepared to fully discuss the Software with Customer and answer questions. By executing this Agreement, Customer acknowledges that it has been given an adequate opportunity to investigate Customer's computer and Software needs and that based on its examination of the Software, Customer finds the Software to be satisfactory.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below. This Agreement is not effective, and the license of the Software will not commence, until it has been executed by an authorized representative of both Customer and Spillman.

Accepted and Approved by:

Customer: _____

Signature: _____

Print Name: _____

Title:_____

Date: _____

Spillman Technologies, Inc.

Signature: _____

Print Name: _____

Title: **Vice President** _____

Date: _____

Exhibit A
Maintenance and Support Agreement

This Maintenance and Support Agreement (the "Support Agreement"), dated effective as of the date this Agreement is signed by both parties below, is by and between Spillman Technologies, Inc. ("Spillman") and _____ ("Customer"). In connection with the Purchase and License Agreement between the parties (the "License Agreement"), Customer desires to purchase from Spillman certain maintenance and support services for the Software. All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the License Agreement.

In consideration of the mutual agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1: Definitions

1.1 **Coverage Hours.** The hours between 8:00 a.m. and 5:00 p.m., Central Time, Monday through Friday, excluding regularly scheduled holidays of Spillman.

1.2 **Enhancement.** Any modification or addition that, when made or added to the Software, changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Spillman may designate Enhancements as minor or major, depending on Spillman's assessment of their value and of the function added to the preexisting Software.

1.3 **Error.** Any failure of the Software to conform in all material respects to its functional specifications as published from time to time by Spillman, subject to the exceptions set forth in Section 4.

1.4 **Error Correction.** Either a software modification or addition that, when made or added to the Software, establishes material conformity of the Software to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect on Customer of such nonconformity. Error Correction services are subject to the exceptions set forth in Section 4.

1.5 **Releases.** New versions of the Software, including all Error Corrections and Enhancements.

1.6 **Response Time.** Six (6) or less Coverage Hours, from the time Customer first notifies Spillman of an Error until Spillman initiates work toward development of an Error Correction.

1.7 **Support Term.** The Initial Support Term together with all renewal terms of this Agreement. The Initial Support Term will be for the twelve (12) month period of the Warranty Period, as defined in Section 11.1 of the License Agreement. Thereafter, the Support Term shall have three (3) one (1) year renewal option unless terminated pursuant to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3370.

Section 2: Eligibility For Support

2.1 Spillman's obligation to provide the support and maintenance services described in this Support Agreement with respect to the Software may be terminated or suspended, at Spillman's discretion, if at any time during the term of this Support Agreement any of the following requirements are not met:

2.1.1   The License Agreement must remain valid and in effect at all times;

2.1.2   The Software must be operated on a hardware platform approved by Spillman; and

2.1.3   Customer must be current on payment of maintenance and support fees.

2.2   Spillman may require Customer to appoint a new Spillman Application Administrator in order to continue receiving support services or increase Customer's support fees, if Spillman reasonably determines that the acting Spillman Application Administrator does not have the training or experience necessary to communicate effectively with Spillman support personnel.

Section 3: Scope of Services

During the Support Term, Spillman shall render the following services in support of the Software, during Coverage Hours:

3.1   Spillman shall maintain a Support Services Control Center capable of receiving from the Spillman Application Administer, by telephone, reports of any software irregularities, and requests for assistance in use of the Software.

3.2   Spillman shall maintain a trained staff capable of rendering support services set forth in this Support Agreement.

3.3   Spillman shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to Spillman in accordance with Spillman's standard reporting procedures. Spillman shall, after verifying that such an Error is present, initiate work within the Response Time in a diligent manner toward development of an Error Correction. Following completion of the Error Correction, Spillman shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and Spillman shall include the Error Correction in all subsequent Releases of the Software. Spillman supports two (2) versions back from the most recent release version. However, Spillman shall not be responsible for correcting Errors in any version of the Software other than the most recent release.

3.4   Spillman may, from time to time, issue new Releases of the Software to its Customers generally, containing Error Corrections, minor Enhancements, and, in certain instances, if Spillman so elects, major Enhancements. Spillman reserves the right to require additional license fees for major Enhancements upon DIR approval. Spillman shall provide Customer with one copy of each new Release, without additional charge. Spillman shall provide reasonable assistance to help Customer install and operate each new Release, provided that such assistance, if required to be provided at Customer's facility, shall be subject to the supplemental charges set forth in Appendix C of DIR Contract No. DIR-TSO-3370 and Spillman's current Fee Schedule.

3.5   Spillman shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Software (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to in writing by Spillman and Customer.

Section 4: Services Not Covered by this Support Agreement

The services identified in this section are specifically NOT covered by this Support Agreement. Spillman strongly recommends that Customer secure a separate support agreement with third party vendors for all non-Spillman products. Spillman may, in its discretion, provide such services to Customer upon request, for an additional fee as the parties may agree in writing.

4.1   Support for any third party products including hardware, or support for hardware failure due to the use of any third party vendor products. Spillman may in its discretion provide first-line support for third party software; if not, Spillman will refer Customer to the vendor of such software for resolution of support issues.

4.2   Any network failures or problems including, but not limited to, cabling, communication lines, routers, connectors, and network software.

4.3   Restoration and/or recovery of data files and/or the operating system. Spillman will, upon request of Customer and subject to its then-current fees for such services, use reasonable efforts to assist Customer in recovering lost data.

4.4   Any breach of warranty, damages to the Software or its database, data corruption, or support issues, security issues, or performance issues arising out of Customer's or a third party's use of the Utilities or any software not specifically licensed by Spillman to Customer for use in connection with the Software. Any assistance provided by Spillman in resolving such problems shall be charged to Customer on a time and materials basis. Additionally, any unauthorized use of the Utilities or other software in connection with the Software by Customer (or by a third party with Customer's knowledge) may result, at Spillman's sole option, in voidance of warranties, an increase in the annual maintenance and support fees under this Support Agreement, and/or loss of rights to upgrades under this Support Agreement.

4.5   Any damages to or problems with the Software or its database, data corruption, support issues, security issues, or performance issues arising from Customer's utilization of the "write" feature of the ODBC interface to write to or modify the database in any way.

4.6   Support for Software problems caused by Customer misuse, alteration or damage to the Software or Customer's combining or merging the Software with any hardware or software not supplied by or identified as compatible by Spillman, customizing of programs, accident, neglect, power surge or failure, lightning, operating environment not in conformance with the manufacturer's specifications (for electric power, air quality, humidity or temperature), or third party software or hardware malfunction.

4.7   Supporting, configuring, maintaining, or upgrading the operating system, including, but not limited to, backups, restores, fixes, and patches.

4.8   Assistance with problems caused by operating system installation, configuration, errors, maintenance or repair, or using incorrect versions of the operating system.

4.9   Onsite service visits to Customer's facility.

4.10 Printers connected to the back of terminals/personal computers (commonly called pass-through printing) or network printers are not supported by Spillman.

Section 5: Obligations of Customer

5.1 Customer must maintain and provide, at no cost to Spillman, access to broadband internet connectivity for VPN connection purposes and a Cisco 1811 integrated services router and data set, or equivalent, connected directly to customer's network, with full access to the server (24 hours per day, 7 days per week) that is used with the Licensed Program.

5.2 A representative of Customer's IT department must be present when any onsite support is provided. Customer agrees that if such representative is not present when the Spillman representative arrives on site, the Spillman representative shall notify an appropriate representative of Customer, if feasible, that there is no Customer IT representative present. If Customer's IT representative does not arrive within a reasonable time, no work will be performed and Customer will be charged for all expenses incurred and relating to the visit.

5.3 All communications between Customer and Spillman must be in the English language.

5.4 Customer is responsible for providing one or more qualified Spillman Application Administrators as described in Section 6. At least one authorized representative, as specified in Appendix 1, must be available at all times; however, after-hours availability is required only when and if Customer is requesting after-hours support from Spillman.

5.5 Customer is responsible for providing all network and server security.

5.6 Customer must provide Spillman with information sufficient for Spillman to duplicate the circumstances under which an Error in the Software became apparent.

Section 6: Spillman Application Administrator Requirements

6.1 The designated Spillman Application Administrator must be certified by Spillman within one year of the date of Customer's cutover to live operation of the Software ("Go-live"). The designated administrator must meet the following requirements in order to certify at the basic level:

    6.1.1 Attend and participate in, and successfully pass the final written and practical examinations from the following courses within one hundred twenty (120) days of installation of the Software:

        i. System Introduction – Inquiry,
        ii. System Introduction – Data Entry & Modification,
        iii. If applicable, UNIX Fundamentals Training (AIX),
        iv. Basic System Administration, and
        v. Spillman training applicable for the Spillman applications used by Customer.

    6.1.2 Pass the Basic SAA exam within one year after the agency's Go-live date.

6.2   Customer will be responsible for the costs of such training, including any course fees, travel, and lodging expenses.

6.3   Contact information for the Spillman Application Administrator(s) must be recorded in Appendix 1 of this Support Agreement. Appendix 1 must be signed by an authorized representative of Customer. Changes to the information recorded in Appendix 1 will require that a new Appendix 1 be completed, signed and filed with Spillman.

6.4   Requests for support services received by anyone other than an authorized agency representative as identified in the current Appendix 1 on file with Spillman, will be refused.

6.5   Each designated agency representative must be qualified to address, or have other support resources to address, without the aid of Spillman, all problems relating to hardware, software, or operating system not directly associated with the Software.

Section 7: Fees and Charges

7.1   Customer shall pay Spillman the Support Fee, as set forth in Appendix C of DIR Contract No. Dir-TSO-3370 and Exhibit B: Purchased Products and Services, and any other charges or fees described herein. Spillman reserves the right to change its Support Fee, upon DIR approval, effective upon no less than 90 days prior written notice to Customer. Second-year level support fees, as referenced in Appendix C of DIR Contract No. DIR-TSO-3370 and Exhibit B: Purchased Products and Services, are charged beginning the day after the end of the Initial Support Term, as defined in Section 1.7. Additionally, DIR-approved adjustments to Support Fees may result from changes in (1) software prices, (2) number of software modules used, (3) an increase in Customer's size (as further described in Section 7.6) , (4) computer hardware, (5) Coverage Hours selected by Customer, or (6) violation of the restrictions set forth in Section 4.4 of this Support Agreement.

7.2   Spillman shall invoice Customer for annual Support Fees at the beginning of each contract year. In the event that additional billable work is performed, all billable charges and expenses will be invoiced to Customer at the beginning of the month following the month in which they accrued or were incurred. Customer shall pay the undisputed invoiced amounts in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3370.

7.3   Customer shall be responsible for and agrees to pay the fees and charges incurred for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, networks, and other products necessary to operate the Licensed Software.

7.4   Customer agrees to pay additional charges according to Appendix C of DIR Contract No. DIR-TSO-3370 and the Spillman Fee Schedule for all work required by Customer and performed outside of Coverage Hours. These charges are applicable for any work performed outside of the Coverage Hours, REGARDLESS OF THE CAUSE, even if the requested work was reported and/or initiated during normal Coverage Hours.

7.5   Should Customer request onsite support services, Customer shall reimburse Spillman for all pre-approved labor, travel, and related expenses incurred by Spillman in providing such support services. Travel reimbursements will be in accordance to the Texas Travel Management Guide as provided by the Texas Comptroller of Public Accounts.

7.6   Additional Support Fees may be required by Spillman if there is a significant increase in Customer's size with respect to use of the Software. An increase in size may arise either out of Customer's internal growth or out of a Host Agency/Shared Agency arrangement as described in Section 4.4 of the License Agreement, if applicable.   Relevant factors include number of employees, number of dispatchers and/or number of jail beds. Payment of such additional Support Fees will be handled in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3370. Such fees will be prorated, based upon the date during the contract year the increase in Customer's size occurred.

Section 8: Termination

8.1   This Support Agreement shall automatically terminate immediately upon termination of the License Agreement for any reason.

8.2   Termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3370.

Section 9: General

9.1   The terms of Section 11: Limited Warranty and Limitation of Liability; Indemnification and Section 13: Miscellaneous of the License Agreement are hereby incorporated into this Support Agreement by reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

Customer: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Spillman Technologies, Inc.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Appendix 1
Authorized Agency Technical Representative(s)
Contact Information

See Section 6 of the Support Agreement for a description of representative responsibilities and authorized activities, including authorization for system changes and operation.

Name: _____

Work Phone: _____

Cell Phone: _____

Email: _____

Exhibit B
Purchased Products and Services

Exhibit C
Existing Interfaces – Technical Product Documents

The following interfaces are included as part of the Software licensed to Customer:

[list]

Spillman reserves the right to modify the functionality of the Software (including its interfaces) from time to time as it updates the Software.

Exhibit D
Custom Interfaces – Scope of Work

Spillman and Customer agree that Spillman will work to develop the following new or modified interfaces for use with the Software and Customer's system:

[list]

The price for these services is included in Appendix C of DIR Contract No. DIR-TSO-3370 and Exhibit B. Upon completion of development, Spillman will deliver the new interface(s) to Customer. Such interfaces will be owned by Spillman and licensed to Customer as part of the Software, under the terms of DIR Contract No. DIR-TSO-3370 and this Agreement.

Exhibit E
Data Conversion – Scope of Work